

1993

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN BROADCASTING CORPORATION AMENDMENT BILL 1993

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and
Communications, Senator the Hon Bob Collins)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE
SENATE TO THE BILL AS INTRODUCED.

AUSTRALIAN BROADCASTING CORPORATION AMENDMENT BILL 1993

OUTLINE

This Bill amends the Australian Broadcasting Corporation Act 1983 to implement certain minor policy changes and make technical amendments to modernise and update provisions of the Act.

The proposed amendments will:

- . apply new corporate planning and annual reporting requirements to the Australian Broadcasting Corporation (the Corporation);
- . streamline certain administrative arrangements under the Act;
- . reflect changes to complaints handling procedures to align with processes introduced by the Broadcasting Services legislation; and
- . make other minor technical changes such as removing gender-specific language and updating terms used in the Act to reflect modern usage in other broadcasting legislation.

The Bill requires the Corporation to prepare a Corporate Plan setting out the objectives and overall strategies and policies to be followed by the Corporation. It also requires the Corporation to include in its Annual Report, an assessment of the extent to which the objectives of the Corporate Plan have been achieved.

The Bill contains provisions to improve the administrative efficiency of the Corporation. It provides for the transfer of some of the more routine administrative responsibilities of the Board to officers of the Corporation. It also puts in place arrangements for the Remuneration Tribunal to determine recreation leave entitlements for the Managing Director to make the Act consistent with other Commonwealth legislation.

The Bill will repeal section 82 of the Act which requires the appointment of Community Affairs Officers within the Corporation to investigate complaints about errors of fact in ABC programs and invasions of privacy by the ABC in the preparation or broadcast of programs. The provision is proposed for repeal consequential upon the introduction of new external complaints handling procedures for the Corporation.

The Bill also contains other amendments to generally update the terminology in the Act.

FINANCIAL IMPACT

This Bill will have no direct impact on Commonwealth expenditure or revenue. No additional resources will be required by the Corporation to meet its new corporate planning and annual reporting requirements.

ABBREVIATIONS

In this Explanatory Memorandum, the following abbreviations are used -

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| the Bill | the Australian Broadcasting Corporation Amendment Bill 1992 |
| the ABC Amendment Act | the Australian Broadcasting Corporation Amendment Act 1993 |
| the ABC Act | the Australian Broadcasting Corporation Act 1983 |
| the Broadcasting Act | the Broadcasting Act 1942 |
| the BSA | the Broadcasting Services Act 1992 |
| the SBS Act | the Special Broadcasting Service Act 1991 |

NOTES ON CLAUSES

Clause 1 - Short title etc.

This clause provides for the citation of the Australian Broadcasting Corporation Amendment Act 1993, and provides that in the ABC Amendment Act, 'Principal Act' means the ABC Act.

Clause 2 - Commencement

This clause provides for the commencement of the ABC Amendment Act on the day it receives the Royal Assent.

Clause 3 - Interpretation

This clause inserts a new definition of "broadcasting service" which is required because the term is used in provisions inserted by other clauses of the Bill. The definition is based on the definition of a broadcasting service in section 6 of the BSA.

Clause 4 - Insertion of new section

Clause 4(1) inserts a new section 14A in the ABC Act which:

- (1) provides that the recreation leave entitlements of the Managing Director will be determined by the Remuneration Tribunal (new subsection 14A(1));
- (2) provides that the Board must approve the Managing Director taking recreation leave (new subsection 14A(2)); and
- (3) provides that the Board will determine and approve all leave other than recreation leave and determine the terms and conditions for such leave (new subsection 14A(3)).

Clause 4(2) is a transitional provision which provides that the new section 14A does not apply in relation to the current term of appointment of the Managing Director.

Clause 4(3) provides that during the current term of appointment of the Managing Director, the terms and conditions of that appointment relating to leave of absence continue to apply.

Clause 5 - General powers of the Corporation

Section 25 of the ABC Act sets out the general powers of the ABC.

Clause 5(a) amends paragraph 25(5)(c) of the ABC Act to correct a minor anomaly. The purpose of the amendment is to ensure that the Corporation can receive payments from subscribers for subscription television broadcasting services which have been specified as national broadcasting services under section 13 of the BSA.

Clause 5(b) amends paragraph 25(5)(d) of the ABC Act to make a similar amendment to that in clause 5(a). The purpose of the amendment is to ensure that the Corporation can receive payments in relation to subscription broadcasting and subscription and open narrowcasting services which have been specified as national broadcasting services under section 13 of the BSA.

Clause 6 - Hedging contracts etc.

Section 25B of the ABC Act enables the ABC to enter into hedging contracts and other financial arrangements. Subsection 25B(3) prevents the ABC entering into such a contract otherwise in accordance with Ministerial guidelines.

This clause substitutes a new subsection 25B(3) to clarify that the ABC can enter into hedging contracts or other

arrangements under subsection 25B(1) in the absence of Ministerial guidelines, but that where guidelines have been determined, it must comply with them.

Clause 7 - News services

Subsection 27(2) of the ABC Act requires the ABC to broadcast daily regular sessions of news and information relating to current events.

Clause 7(a) omits subsection 27(2) and substitutes a new subsection which updates the language used to reflect current terminology used in the BSA.

Clause 7(b) adds two new subsections to section 27 of the ABC Act.

New subsection 27(5) provides that the ABC is not required to broadcast daily news and information sessions on a subscription broadcasting service, subscription narrowcasting service or open narrowcasting service unless the Minister specifies that the service must do so. This amendment recognises that subscription and narrowcasting services are of a different character than free-to-air broadcasting services and that it will not be appropriate in all cases for such services to provide a regular news service.

New subsection 27(6) provides that a specification made under new subsection 27(5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*, and is accordingly required to be tabled in Parliament and is subject to Parliamentary disallowance.

Clause 8 - Publication of journals etc. and making etc. of sound recordings etc.

Subsection 29(1) of the ABC Act enables the ABC, in such manner as the Board thinks fit, to prepare and distribute literary material (including program schedules) and to do various other activities.

Subsection 29(2) enables the ABC, if the Board thinks fit, to determine charges payable in respect of the matters in subsection 29(1).

Decisions about issuing program schedules and charges for ABC products are routine administrative matters which are more appropriately made by officers of the Corporation than the Board.

Clause 8(a) amends subsection 29(1) of the ABC Act to transfer responsibility for these decisions from the Board to the Corporation. Section 23 of the Act enables the Corporation to delegate these powers.

Clause 8(b) omits paragraph 29(1)(a) and substitutes a new paragraph which updates the language used to reflect current terminology used in the BSA.

Clause 8(c) amends subsection 29(2) of the ABC Act to transfer responsibility for the determination of charges in respect of matters and activities set out in subsection (1) from the Board to the Corporation.

Clause 9 - Insertion of new Part IVA

This clause inserts a new Part IVA in the ABC Act which creates new corporate planning requirements for the ABC.

Corporate Plans

New subsection 31A(1) requires the Board to prepare corporate plans.

New subsection 31A(2) provides that the first corporate plan must be for a period of between 3 and 5 years and must be given to the Minister within 6 months of the commencement of the Act.

New subsection 31A(3) provides that each subsequent corporate plan must be for a period of between 3 and 5 years and begin immediately after the end of the previous plan.

New subsection 31A(4) provides that the Board can review and revise a corporate plan at any time.

Matters to be included in corporate plans

New subsection 31B(1) sets out the matters which must be included in each corporate plan:

- (a) the objectives of the Corporation and its subsidiaries; and
- (b) an outline of the overall strategies and policies that the Corporation and its subsidiaries are to follow to: achieve the objectives of the Corporation; and to fulfil the Corporation's functions; and to ensure that the Board fulfils its duties under section 8 of the ABC Act; and
- (c) a forecast of the revenue and expenditure of the Corporation and its subsidiaries, including a forecast of capital expenditure and borrowings; and
- (d) such financial and operational performance indicators and targets as the Board considers appropriate; and
- (e) such other matters as are prescribed.

New subsection 31B(2) defines 'subsidiary' for the purpose of new subsection 31B.

Corporate plans to be given to Minister

New section 31C provides that as soon as practicable after the Board prepares or revises a corporate plan, it must give the Minister a copy.

Board to notify Minister of certain matters

New section 31D requires the board to notify the Minister immediately if it considers that matters have arisen which will prevent or significantly affect the achievement of goals set out in the corporate plan (ie the objectives of the Corporation, the strategies and policies that are to be followed under the plan and the forecasts of revenue and expenditure).

Clause 10 - Officers recommended for retirement on medical grounds may be declared unattached

This clause makes a minor technical amendment to section 60 of the ABC Act to obviate the need to take action in relation to a reference to the 'Department of Health' each time there is a change in administrative arrangements affecting the title of the Department which has responsibility for public health matters.

Clause 11 - Estimates

This clause omits subsection 69(2) of the ABC Act to remove the requirement for the ABC not to expend money except in accordance with Ministerial approval of its estimates of expenditure. This change will bring arrangements for the ABC into line with the policy of giving greater financial flexibility to Budget funded agencies.

Clause 12 - Power of Minister to give directions to Corporation in the national interest

Subsection 78(1) of the ABC Act enables the Minister to give directions to the ABC to broadcast particular matter if he or she considers that the broadcasting would be in the national interest.

Clause 12(a) omits subsection 78(1) and substitutes two new subsections 78(1) and (2).

New subsection 78(1) updates the language used in the current subsection 78(1) to reflect current terminology in the BSA.

New subsection 78(2) defines the term 'national broadcasting services' by giving it the same meaning given by section 13 of the BSA.

Clause 12(b) substitutes a new subsection 78(3) to replace a reference to provisions in the Broadcasting Act 1942, dealing with the broadcasting of political or controversial matter (now repealed), with a reference to section 79A of the ABC Act, where these provisions have been relocated.

Clause 13 - Matters to be included in the annual report

Section 80 of the ABC Act requires the Board to include certain matters in the annual report.

Clause 13(a) makes a minor technical amendment to section 80 to make it clear that the Board has responsibility for the contents of the Corporation's annual report, but does not itself have to compile the contents.

Clause 13(b) amends section 80 by adding further paragraphs which require additional matters to be included in the annual report. These are:

- (i) an assessment of the extent to which the operations of the Corporation and its subsidiaries during the year have achieved the objectives of the Corporation and its subsidiaries under the corporate plan and fulfilled the Corporation's functions; and
- (j) particulars of any activities carried out during the year by the Corporation under subsection 25A(2) of the ABC Act (which enables the ABC to form companies and enter into other arrangements for carrying out a business or activity incidental to its functions); and
- (k) particulars of the activities during the year of any authorised business with which the Corporation is associated under subsection 25A(2).

Clause 14 - Repeal of section

This clause repeals section 82 of the ABC Act which requires the appointment of Community Affairs Officers within the ABC to investigate complaints to the ABC about errors of fact in ABC programs and invasions of privacy by the ABC in the preparation or broadcast of programs. The provision is proposed for repeal consequential upon the introduction of new external complaints handling procedures for the ABC.

Schedule 2 of the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992* amended the ABC Act to require the ABC to develop codes of practice in relation to its programming. Division 2 of Part 11 of the *Broadcasting Services Act 1992* empowers the Australian

Broadcasting Authority (ABA) to investigate complaints in relation to the performance of the ABC against its codes of practice. The ABC Board has given an undertaking to the Minister for Transport and Communications that it will immediately amend its Codes of Practice to address the issues of errors of fact and invasion of privacy if the internal review mechanism in section 82 is repealed.

Clause 15 - Regulations and rules

Section 83 of the ABC Act enables the making of regulations and rules under the Act.

Subsections 83(4) to (6) have the effect of making rules disallowable instruments.

This clause omits those subsections and substitutes a new subsection 83(4) which has the same effect but which is in a much simpler form.

Clause 16 - Other amendments

This clause provides for the amendments to the ABC Act set out in Schedules 1 and 2 of the ABC Amendment Act.

Schedule 1 deletes the words "televise", "televising", "television" and "television programs" to reflect current terminology. "Broadcasting services" are defined in the BSA as including services which deliver radio or television programs.

Schedule 1 also contains other minor and consequential amendments.

Schedule 2 substitutes non-gender specific terminology in the ABC Act for the gender specific terminology currently used.

Clause 17 - Consequential amendments

This clause amends the *Parliamentary Proceedings Act 1943* in accordance with Schedule 4 of the ABC Amendment Act.

Schedule 4 amends section 3 to omit the definition of 'national broadcasting station' and replace it with a new definition which defines a 'national broadcasting station' to be a radio station which provides national broadcasting services within the meaning of section 13 of the BSA.

Schedule 4 also amends subsections 4(1) and (2) to omit the reference to the '*Broadcasting Act 1942*' and substitute the '*Australian Broadcasting Corporation Act 1983*'.

Clause 18 - Part V amendments

This clause provides that the amendments to Part V, set out in the ABC Amendment Act, will not have any effect if section 8 of the *Broadcasting Legislation Amendment Act 1988* commences before the commencement of the ABC Amendment Act. Section 8 amends the ABC Act to provide that the Corporation can engage its own employees and determine the terms and conditions of employment. Section 8 has not yet been proclaimed, pending the finalisation of negotiations about terms and conditions of employment with relevant unions.



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